

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA

RECEIVED EASTERN DIVISION

CHRISTOPHER McCUNHUGH

DEBRA P. HACKETT, CLK
U.S. DISTRICT COURT
MIDDLE DISTRICT ALA

#174909

PETITIONER,

VS.

DANIEL JONES, WARDEN

RESPONDENTS,

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CASE NO. 3:07-CV-26-MEF

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RESPONSE TO RESPONDENTS ANSWER

COMES NOW THE PETITIONER TO WHO
PRODUCED THE CLAIMS SET FORTH TO
THIS COURT STANDARD REVIEW CONTENTS
THAT THIS RESPONSE SHOULD
NECESSARILY OUTWEIGH THE RESPONDENT
ANSWER TO SHOW THAT THE STATE COURTS
DECISIONS WERE UNREASONABLE AND
I CONTEST THAT THE TIME FRAME
IS OF COMPLETE FAULT OF THE CIRCUIT
COURT FOR NOT FOLLOWING THE PROPER MEANS
OF ALABAMA RULES OF CRIMINAL
PROCEDURE.

AS THE RULES OF ALABAMA COURT WAS ESTABLISHED
IT INSINUATED THAT THESE RULES BE HONORED
BY THE COURTS AND ALL DEFENDENTS THAT
PROCEED WITH LEGALITIES.

RULES OF COURT: [ISSUANCE]

THIS SPECIFICALLY STATES THAT ANYTIME
A CIRCUIT JUDGE MAKES A FINAL DECISION
OR JUDGEMENT HE SHALL DO SO BY WAY OF A
WRITTEN ORDER AND AWARE THE CIRCUIT
CLERK OF SAID ORDER TO WHICH THE
CIRCUIT CLERK SHALL BE RESPONSIBLE THAT
ALL OF THE PARTIES BE SENT A COPY OF THE
SAID ORDER OF THE FINAL DECISION.

IF THIS IS NOT DONE IT CONSTITUTES
NONCOMPLIANCE WITH THE STATE COURT.

THERE IS NO INDEPENDENT EVIDENCE
IN THE RESPONDENTS ANSWER THAT VERIFIES
THAT THERE HAS BEEN A FINAL DECISION OR
JUDGEMENT MADE BY WRITTEN ORDER FOR
THE MERITS TO BE ADJUDICATED IN THE
CIRCUIT COURT OF CHAMBERS COUNTY,
ALABAMA. NONE TAKES ANY VERIFICATION
OF SERVICE TO THE PETITIONER.

THIS SHOWS AN COMPLETE EXCEPTIONAL
CIRCUMSTANCE THAT ENTITLES ME TO
EQUITABLE TOLLING.

THE ISSUES SOUGHT IN POST-CONVICTION REVIEW WAS ACCOMPANIED BY A 4705 PAGES OF ACTUAL FACTS OF THIS TRIAL AND CASE ON WHICH THE RESPONDENTS ANSWER DOES NOT DISCLOSE.

① ONE CLAIM PRESENTED WAS INEFFECTIVE ASSISTANT OF COUNSEL ON WHICH I PROPERLY ADDRESSED THE ISSUE TO THE CIRCUIT COURT OF HIS DEFICIENCY AT TRIAL FOR NOT EVER DISPUTING THE MOST IMPORTANT ELEMENT AT TRIAL WHICH IS THE CORROBORATE EVIDENCE, ON WHICH I WAS DENIED REVIEW ON APPEAL TO THE COURT OF CRIMINAL APPEALS BECAUSE THEY SAID THAT I DID NOT BRING IT TO THE TRIAL COURT'S ATTENTION ON WHICH I PROTEST TO FOR WRIT OF CERTIORARI THAT THIS ATTORNEY DID NOT MEET HIS DUTIES REQUIRED BY HAW.

② I PRESENTED FACTS ABOUT THE INSUFFICIENT EVIDENCE WHICH THE JURY ACCUMULATED ITS VERDICT FROM DEALING WITH THE CO-DEFENDANT STATEMENT AND TESTIMONY OF FINGERPRINTS CONCERNING THIS HOUSE AND GUNS.

③ I PROPERLY PRESENTED THE ISSUE OF UNLAWFUL SEARCH AND SEIZURE ON WHICH THE COURT OF CRIMINAL APPEALS STATED THAT I HAD NO ROOM TO STAND THE CHALLENGE TO SEARCH THE HOUSE BUT THEY NEVER MENTIONED ONE TIME OF MY CHALLENGE THE SEARCH OF MY MUSTANG WHICH SHOWS THAT THEY DID NOT REVIEW THIS SITUATION AS A WHOLE BUT ONLY USED THE EVIDENCE THAT WOULD BOLSTER THE STATES CASE AGAINST ME.

④ I PROPERLY PRESENTED THE ISSUE OF DOUBLE JEOPARDY BECAUSE IT IS A KNOWN FACT THAT A PERSON ON TRIAL FOR BURGLARY AND THEFT CANNOT ALSO BE CHARGED WITH RECEIVING THE SAME PROPERTY. DAVIDSON V. STATE, 360 SO.2D 728 (ALA. CRIM. APP. 1978.)

THE JUDGE INSTRUCTED THE JURY TO FIND ME GUILTY OF BURGLARY 1ST AND THEFT SECOND AND NOT GUILTY OF RECEIVING STOLEN PROPERTY OR GUILTY OF RECEIVING STOLEN PROPERTY AND NOT GUILTY OF BURGLARY 1ST DEGREE AND THEFT OF PROPERTY 2ND DEGREE WHICH CONSTITUTES THAT I WAS ON TRIAL TO RECEIVE AN AUTOMATIC CONVICTION. SEE PAGES 130 THRU 140 THE RECORD IS COMPLETE SILENT DEALING WITH THE RECEIVING STOLEN PROPERTY CHARGE INCLUDED IN THIS INDICTMENT. RESPONDENT'S ANSWER

THESE ISSUES PROVE THAT I DID PROPERLY
 PRESENT THEM IN STATE COURT ON WHICH
 IT STAYED IN THE CHAMBERS COUNTY
 CIRCUIT COURT DOCKET FOR 18 MONTHS
 WITHOUT THE TRIAL COURT CONDUCTING
 AN EVIDENTIARY HEARING WHICH
 SHOWS THAT THEY DID NOT ALLOW ME TO DISPUTE
 THE ISSUES AT HAND IN OPEN COURT.
 WHEN POST-CONVICTION CONTAINS MATTERS
 WHICH IF TRUE, WOULD ENTITLE PETITIONER
 TO RELIEF, EVIDENTIARY HEARING
 MUST BE HELD.

RULES OF CRIMINAL PROCEDURE
 RULE 32.9

I ALSO CONTENTED THAT THE DISTRICT ATTORNEY
 NEVERED RESPONDED TO THESE ISSUES

998(14.1) IN GENERAL

AHA. CRIM. APP. 1998 - WHEN STATE DOES NOT
 RESPOND TO ALLEGATIONS IN PETITION
 FOR POST-CONVICTION RELIEF, UNREFUTED
 STATEMENT OF FACTS MUST BE TAKEN
 AS TRUE. - RULES OF CRIM. PROC. RULE 32-

BRYANT V. STATE, 739 So. 2d 1138
 THEREFORE ANY CLAIM OF DEFAULT
 TO THESE ISSUES IN FEDERAL
 COURT SHOULD BE VOIDED.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT ON THIS
THE 19TH DAY OF FEBRUARY, 2007, I
HAVE SENT AN EXACT, SAME COPY OF
THE FOREGOING TO: TROY KING

OFFICE OF THE ATTORNEY GENERAL

ALABAMA STATE HOUSE

11 SOUTH UNION

MONTGOMERY, ALABAMA 36130-0152

BY PLACING THE SAME, POSTAGE PAID
IN THE UNITED STATES POSTAL SERVICE
USING AN UNITED STATES POST OFFICE.

RESPECTFULLY,

Christopher C. McCullough

ADDRESS OF COUNSEL

CHRISTOPHER MCCULLOUGH

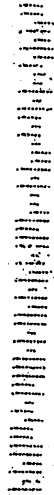
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